REMARKS

Reconsideration and withdrawal of the rejections of this application and consideration and entry of this paper are respectfully requested in view of the herein remarks and accompanying information, which place the application in condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 1-3, 5, 7, 11, 13, 15, 17, 19, 20, 22, 23, 25, 26, 28-32, 34-41, 101, and 104-107 are pending in this application. Claims 1-3, 40, 41, and 101 are amended without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents.

The amendment to claims 1-3, 40, 41, and 101 are to clarify that the agent is selected from the group consisting of (a) an antibody that binds to MHC antigens, (b) erythropoietin, and (c) GM-CSF, which was previously recited in a wherein clause. No new matter is added.

It is submitted that the claims herewith are patentably distinct over the prior art, and these claims are in full compliance with the requirements of 35 U.S.C. §112. The amendments to the claims presented herein are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply to clarify the scope of protection to which Applicant is entitled.

II. THE REJECTIONS UNDER 35 U.S.C. § 102 ARE OVERCOME

Claims 1-3, 7, 17, 19, 20, 22, 23, 25, 26, 28, 29-32, and 34-41 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Gilford (U.S. Patent No. 4,058,367). Claims 1-3, 7, 17, 19, 20, 22, 23, 25, 26, 28-32, and 34-41 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Tomioka et al. (U.S. Patent No. 4,983,359). These rejections are traversed and will be addressed collectively.

The Office Action alleged that the means for introducing into said chamber an agent capable of increasing the relative number of undifferentiated cells in a cell population is not given any patentable weight because it refers only to the intended use of the agent. Therefore, the intended use of the device, wherein the agents are limited to the antibody which binds to MHC antigens, erythropoietin, or GM-CSF, has not been given any patentable weight. The

Office Action then contended that Gilford and Tomioka et al. disclose a device that comprises the same structural elements as claimed in the claimed device.

In response, Applicant respectfully disagrees. The instant claims relate to a device comprising a device comprising a chamber, means for introducing into the chamber a cell population including committed cells or haematopoietic cells; means for introducing into the chamber an agent selected from the group consisting of (a) an antibody that binds to MHC antigens, (b) erythropoietin, and (c) GM-CSF; incubation means for incubating the committed cells in the presence of the agent; and mixing means for mixing the agent and the cell population in the chamber. Applicant submits that there is no recitation of intended use of the agent in the instant claims or in the claims as presented in the previous Amendment and Response to Office Action filed October 13, 2008. In particular, there is no recitation that the agent is capable of increasing the relative number of undifferentiated cells in a cell population. Therefore, the agent introduced into the chamber should be given full patentable weight, as the agent is an element of the claimed device.

With this in mind, Gilford and Tomioka et al. do not anticipate the claimed invention. Applicant reminds that "[a] rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference." *In re Buszard* 504 F.3d 1364, 1366 (Fed. Cir. 2007) (citing *In re Paulsen,* 30 F.3d 1475, 1478-79 (Fed. Cir. 1994); *Karsten Mfg. Corp. v. Cleveland Golf Co.,* 242 F.3d 1376, 1383 (Fed. Cir. 2001) ("Invalidity on the ground of 'anticipation' requires lack of novelty of the invention as claimed . . . that is, all of the elements and limitations of the claim must be shown in a single prior reference, arranged as in the claim."). Gilford relates to an apparatus for processing fluids for ascertaining physical and/or chemical properties of the fluids, while Tomioka et al. relates to an apparatus for measuring lymphocyte subclasses comprising a staining means for mixing and reacting to a tagged monoclonal antibody with a blood sample, a sensing station, a laser light source, sensors, and a data processing means. Neither cited reference teaches an agent selected from the group consisting of an antibody that binds to MHC antigens, erythropoietin, and GM-CSF. Thus, neither Gilford nor Tomioka et al. anticipate the claimed invention.

Accordingly, reconsideration and withdrawal of the Section 102 rejections are requested.

III. THE REJECTIONS UNDER 35 U.S.C. § 103 ARE OVERCOME

Claims 1-3, 5, 7, 17, 19, 20, 22, 23, 25, 26, 28, 29-32, and 34-41 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Gilford in view of North (U.S. Patent Publication No. 2001/0052763). Claims 1-3, 7, 11, 13, 17, 19, 20, 22, 23, 25, 26, 28-32, and 34-41 were rejected under 35 U.S.C. § 103(a) as allegedly being upatentable over Tomioka *et al.* in view of Johnson (U.S. Patent No. 4,563,907). These rejections are traversed and will be addressed collectively.

As described above, the device of the instant claims comprise an agent selected from the group consisting of an antibody that binds to MHC antigens, erythropoietin, and GM-CSF. The antibody that binds to MHC antigens, erythropoietin, and GM-CSF are indeed components of the apparatus.

A *prima facie* case of obviousness requires that the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP 2143. Notably, Gilford does not teach or suggest a device that comprises an agent selected from the group consisting of an antibody that binds to MHC antigens, erythropoietin, and GM-CSF, and North, which was cited for relating to a Coulter counter, does not remedy this deficiency. Similarly, Tomioka *et al.* does not teach or suggest an apparatus that comprises an antibody that binds to MHC antigens, erythropoietin, or GM-CSF, and Johnson, which was cited for relating to a motor driven syringe, does not remedy this deficiency. Thus, neither combination of references teaches or suggests every element of the instant claims, and thereby does not render the instant claims unpatentable.

Accordingly, reconsideration and withdrawal of the Section 103 rejections are requested.

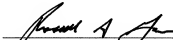
REQUEST FOR INTERVIEW

If any issue remains as an impediment to allowance, an interview with the Examiner and SPE are respectfully requested and the Examiner is additionally requested to contact the undersigned to arrange a mutually convenient time and manner for such an interview.

CONCLUSION

In view of the remarks and amendments herewith, the application is in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By: 

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